

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

RONALD C. FRYER, et al.,

Plaintiff,

v.

BERNIE BROWN et al.,

Defendant.

Case No. C04-5481 FDB

ORDER DENYING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT

This matter is before the Court on Plaintiff Ronald C. Fryer's motion for summary judgment on his claims of copyright and trademark infringement. The Court, having reviewed the motion, response, summary judgment evidence, and the balance of the record, finds that there are disputed issues of material fact precluding summary judgment.

I.

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56( c). Summary judgment is not proper if material factual issues exist for trial. Warren v. City of Carlsbad, 58 F.3d 439, 441 (9<sup>th</sup> Cir. 1995), *cert. denied*, 516 U.S. 1171 (1996). Because of the intense factual nature of trademark disputes, particularly as to the ultimate issue of confusion, summary judgment is generally disfavored in the trademark area. Interstellar Starship Services, Ltd. v. Epix, Inc., 184 F.3d 1107, 1009 (9<sup>th</sup> Cir. 1999); Clicks Billiards, Inc. v. Sixshooters, Inc., 251 F.3d 1252, 1262 (9<sup>th</sup> Cir. 2001).

## II.


Prior to considering this motion, the Court ruled on the summary judgment motions of Defendants Brown and Gilmore, in which the nature of this action and contested issues of fact were set forth and discussed. The parties are directed to the Court's Orders at Docket Nos. 121 and 131. The Court has previously concluded that there is a likelihood of confusion between the domain names "autoupholsterykits" and "autoupholsterykit," but whether Defendant's copying of the domain name was, in fact, deliberate is a disputed fact to be determined at trial. The Court has also previously concluded that the question of whether the websites are similar in design and content is a disputed fact that must be determined at trial. Defendant's response to Plaintiff's summary judgment evidence confirms the existence of these issues of fact, which make the granting of summary judgment inappropriate.<sup>1</sup>

ACCORDINGLY,

IT IS ORDERED:

(1) Plaintiff's motion for summary judgment (Dkt.#96) is DENIED.

DATED this 5th day of August, 2005.

  
FRANKLIN D. BURGESS  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup>In light of the Court's ruling, Defendant's motion to strike portions of Plaintiff's summary judgment evidence will not be addressed. The Court notes however, without comment upon the motion, that all parties and counsel, are held to the same standards, and are expected to comply with the Federal Rules of Civil Procedure, the Federal Rules of Evidence, the Local Rules for the United States District Court for the Western District of Washington, and all orders of this Court.